IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF
SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE A.GOPAL REDDY
WRIT PETITION NO : 16922 of 2004

Between:

Gopal Singh, S/o. Seethal Singh, R/o. 14-8-494,
Purna Pul Junction, Hyderabad.

..... PETITIONER

AND

1 Union of India, rep by its Secretary, Ministry of Law & Justice, Sastry Bhavan, New Delhi.
2 State Bank of Hyderabad, rep by its Manager, Bellavista Branch, Somajiguda, Hyderabad.
3 M/s. Sam Entertainment, A Partship firm rep by its Managing Director, Shri V. Michel Reddy

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of a writ of Mandamus, declaring the impugned action of the 2nd respondent bank in proposing to take forcible possession of the properties me as arbitrary, illegal, capricious, high handed and violate the cannons of law and justice and consequently direct the 2nd respondent bank to follow the guidelines framed by the Apex Court and this Honourable Court in a batch of writ petitions.

Counsel for the Petitioner: MR.L.RAVICHANDER

Counsel for Respondent No.1:Mr.A.Rajashekar Reddy
(Sc For CG)

The Court at the admission stage made the following :

ORDER:

Heard learned counsel for the petitioner and learned Standing Counsel for the first respondent. Both have no objection for disposal of the writ petition at the admission stage.

On issuance of notice dated 20-6-2003 in exercise of powers under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the petitioner earlier filed W.P.No.25974 of 2003 and the same was dismissed following the decision rendered by the Hon'ble Supreme Court in Transfer Case (Civil) No.92-95 of 2002, dated 8th April, 2004 (MARDIA CHEMICALS LTD v. UNION OF INDIA AND OTHERS), holding that challenge to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, is not tenable and for that reason the relief prayed for cannot be granted. On dismissal of the above said writ petition, the petitioner filed the present writ petition stating that he filed his objections before the Recovery Officer, but, the same were not received by him. Now the second respondent is trying to take forcibly possession of the property of the petitioner, which is arbitrary and illegal.

It is nowhere stated that whether the notice issued earlier is under Section 13(2) or 13(4) of the Act, which is the subject matter of the challenge in the earlier writ petition. Learned counsel for the petitioner is also unable to say that the nature of the notice issued earlier is whether under Section 13(2) or 13(4) of the Act. Be that as it may, only after passing the order under Section 13(4), sale is conducted for which auction sale notice is being issued, which is filed along with the writ petition. If that be the case, the proper remedy for the petitioner is to file an appeal against the order passed under Section 13(4) before the Debt Recovery Tribunal or to submit the claim before the Sale Officer appointed. In view of the same, the present writ petition cannot be entertained.

Accordingly, the Writ Petition is dismissed at the admission stage.

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A. Gopal Reddy, J.

22nd September, 2004.
Js.

ASSISTANT REGISTRAR

To
1 The Secretary, Union of India, Ministry of Law & Justice, Sastry Bhavan, New Delhi.
2 The Manager, State Bank of Hyderabad, Bellavista Branch, Somajiguda, Hyderabad.
3 2 CD copies.